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### C.87-143

MAR 9 1989

AMENUMENT TO PARTICIPATION AGREEMENT AND AGREEMENT FOR THE RECONSTRUCTION OF JOINT USE STORM DRAINAGE AND IRRIGATION WASTE FACILITIES LAW BALFARTMENT 87009

564:88-002 This Amendment to Participation Agreement and Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities is between the State of Arizona, acting by and through its Arizona Department of Transportation, ("STATE"), the City of Tempe, Arizona, a municipal corporation, ("TEMPE"), the City of Phoenix, Arizona, a municipal corporation, ("PHOENIX"), the Salt River Valley Water Users Association, an Arizona corporation, ("ASSOCIATION"), the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona,\*("THE PROJECT"), and the Flood Control District of Maricopa County, a municipal corporation and a political subdivision of the State of Arizona, ("DISTRICT").

> \* (collectively referred to as) This Amendment shall become effective as of the date it is filed with the Secretary of State pursuant to Arizona Revised Statutes 11-952, as amended.

DATE FILED WITH THE SECRETARY OF STATE

1. STATE is empowered by Arizona Revised Statutes Section 28-198 to enter into  $^{\star}$ this Agreement, and by Section 48-3621 to grant right-of-way in, under, along, or across State Highway right-of-way for flood control purposes

STATUTORY AUTHORIZATION

- TEMPE is empowered by Tempe Charter Provision 1.03, Arizona Revised Statutes 9-243, and Arizona Revised Statutes 11-952, as amended, to enter into this Agreement.
- PHOENIX is empowered by Chapter 2, Section 2 of the Phoenix City Charter to \* INITIALS enter into this Agreement.
- 4. THE PROJECT is empowered by Arizona Revised Statutes 45-2337 to enter into this Agreement.
- The DISTRICT is empowered by Arizona Revised Statutes 48-3603 to enter into this Agreement.

### BACKGROUND

- On February 9, 1966, the parties hereto, with the exception of PHOENIX and THE PROJECT , entered into an Intergovernmental Agreement (the "Intergovernmental Agreement") for the joint use storm drainage and irrigation waste facilities, and this Intergovernmental Agreement was amended by Addendum dated November 24, 1969.
- 7. On December 19, 1977, Agreement No. 19012 was filed with the Secretary of State That Agreement is entitled "Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities" (the "Joint Use Agreement") and is between STATE, TEMPE, PHOENIX, ASSOCIATION, and DISTRICT. The purpose of that Agreement is to set forth their understanding and agreements relating to the reconstruction and maintenance of the storm drainage and irrigation waste facility, particularly agreeing that TEMPE, PHOENIX, and the DISTRICT

"TEMPE"

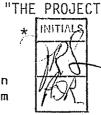
"STATE"

INITIALS

HHITIALS







"DISTRICT" INITIALS

would share the costs of reconstruction of The Channel, (as that term is defined in the Joint Use Agreement), setting forth the maintenance responsibilities of The Channel when reconstructed, and redefining the maximum drainage discharge of water by each party. A copy of the Joint Use Agreement is attached hereto as Exhibit "B"

- 8. On February 3. 1978. Agreement 19598 was filed with the Maricopa County Recorder. The Agreement is entitled "Participation Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities" (the "Reconstruction Agreement") and is between PHOENIX, TEMPE and the DISTRICT. The purpose of this Agreement among other things, was to define the amounts of money each of those parties would contribute. A copy of the Reconstruction Agreement is attached hereto as Exhibit "C"
- 9 On February 7, 1980, an Agreement was filed with the Maricopa County Recorder. This Agreement was entitled "Addendum No. 1 to Participation Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities" ("Addendum No. 1") and is between PHOENIX, TEMPE, and the DISTRICT. The purpose of this Addendum was to increase the contributions to meet total project cost increases. A copy of Addendum No. 1 is attached hereto as Exhibit "D"
- 10 A private entity by the name of Denro United Partners I ("DUPI") desires to develop a project which is intersected by The Channel As part of that development, DUPI has rechanneled and substantially improved The Channel, hereinafter referred to as the "New Channel" and defined in this Amendment as between Station 0+00 which is the beginning of the project at the channelized south bank of the Salt River and Station 35+78 O1 on Exhibit "A" attached hereto Because of that rechannelization—certain property previously within The Channel is no longer a functional part of the New Channel

### TERMS OF AGREEMENT

- All the parties agree to ouit claim to TEMPE by separate documents, all of their interests in the parcels identified as City of Tempe Parcels 1, 2 and 3 on the attached Exhibit "A". subject to receiving access to the other parties rights-of-way for operation and maintenance purposes as described in this Amendment
- The 1977 Reconstruction Agreement states in paragraph 4, item A that the STATE will limit its maximum discharge of water to 93 C F S. Upon this agreement becoming effective the amended maximum discharge of water is 93 C.F S. plus 240 C.F S. or a total of 339 C F S. The discharge of 246 C.F S will come from aim storm sewer connections from I-10 to the new channel between the western boundary of "Denro Parcel 4" and Station 0+00, which is the beginning of the project at the channelized south bank of the Salt River
- 13 The maximum discharge rates of PHOENIX, TEMPE, and the ASSOCIATION for The Channel as defined in the Reconstruction Agreement will remain the same for the New Channel

- 14. The STATE agrees to acquire the rights-of-way for the New Channel from the western boundary of "Denro Parcel 4" to Station 0+00 which is the beginning of the project at the channelized south bank of the Salt River. STATE hereby agrees to provide access to the other parties through its rights-of-way outside the I-10 access control for operation and maintenance purposes
- 15 TEMPE agrees to acquire through exchange "Denro Parcel 1", "Denro Parcel 2", "Denro Parcel 3", and "Denro Parcel 4" TEMPE hereby agrees to provide access to the other parties through its rights-of-way for operation and maintenance purposes
- 16. PHOENIX hereby agrees to provide access to the other parties through its rights-of-way for operation and maintenance purposes
- 17 THE PROJECT hereby agrees to provide access to the other parties through its rights-of-way for operation and maintenance purposes
- 18 Upon this Amendment becoming effective, the DISTRICT agrees to operate and maintain that portion of the New Channel beginning at Station 35+78 D1 and extending to the western boundary of "Denro Parcel 4", except for that portion within the right-of-way limits of 32nd Street
- 19 Upon this Amendment becoming effective. PHOENIX agrees to operate and maintain that portion of the New Channel within the right-of-way limits of 32nd Street, which is generally between the western boundary of "Denro Parcel 2" and the eastern boundary of "Denro Parcel 3"
- 20. Upon this Agreement becoming effective, STATE agrees to operate and maintain that portion of the project beginning at the western boundary of "Denro Parcel 4" and extending westerly to Station 0+00 which is the beginning of the project at the channelized south bank of the Salt River
- For that portion of the New Channel beginning at Station 35+78 01 and extending to the western boundary of "Denro Parcel 4", except for that portion within the right-of-way limits of 32nd Street, DISTRICT agrees to indemnify and save harmless the STATE, PHOENIX, TEMPE, and THE PROJECT, or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or nonperformance of any of the provisions of this Amendment The STATE, PHOENIX, TEMPE, and THE PROJECT shall in all instances be indemnified against all liability, losses and damages of any nature for or on account of any injuries to or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Amendment, except such injury or damage as shall have been occasioned by the negligence of the STATE, PHOENIX, TEMPE: or THE PROJECT. The above cost of damages incurred by the STATE, PHOENIX, TEMPE, or THE PROJECT or any of their departments, agencies, officers or employees shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees
- 22 For that portion of the New Channel within the right-of-way limits of 32nd Street, which is generally between the western boundary "Denro Parcel 2" and

the eastern boundary of "Denro Parcel 3", PHOENIX agrees to indemnify and save harmless the STATE, the DISTRICT, TEMPE, and THE PROJECT, or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or nonperformance of any of the provisions of this Amendment. The STATE, the DISTRICT, TEMPE, and THE PROJECT shall in all instances be indemnified against all liability, losses and damages of any nature for or on account of any injuries to or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Amendment, except such injury or damage as shall have been occasioned by the negligence of the STATE, the DISTRICT, TEMPE, or THE PROJECT. The above cost of damages incurred by the STATE, the DISTRICT, TEMPE, or THE PROJECT, or any of their departments, agencies, officers or employees shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.

- For the portion of the New Channel between the western boundary of "Denro Parcel 4" and Station 0+00 which is the beginning of the project at the channelized south bank of the Salt River, STATE agrees to indemnify and save harmless the DISTRICT, PHOENIX, TEMPE, and THE PROJECT, or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or nonperformance of any of the provisions of this Amendment. The DISTRICT, PHOENIX, TEMPE, and THE PROJECT shall in all instances be indemnified against all liability, losses and damages of any nature for or on account of any injuries to or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Amendment, except such injury or damage as shall have been occasioned by the negligence of the DISTRICT, PHOENIX, TEMPE, or THE PROJECT. The above cost of damages incurred by the DISTRICT, PHOENIX, TEMPE, or THE PROJECT, or any of their departments, agencies, officers or employees shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.
- 24. By execution of this Amendment, the Joint Use Agreement is hereby amended to include as a party thereto the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, as was originally intended by the parties to the Agreement.
- 25. Execution of this Amendment shall in no way be construed to in any way impair or relinquish the rights, obligations or possible liabilities, known or unknown, arising between the parties by virtue of the terms of the Intergovernmental Agreement, the Joint Use Agreement, the Reconstruction Agreement and/or the Addendum No. 1, except as specifically stated in this Amendment
- 26 In accordance with A R S  $\,$   $\,$  11-952, the documents authorizing each party to enter into this Amendment are attached

STATE OF ARIZONA Arizona Department of Transportation

By: Charle & Willer
Director

STATE OF ARIZONA )
) ss
County of Maricopa )

On this, the 29th day of Jone, 1987, before me, the undersigned Notary Public, personally appeared Charles L. Miller, the Director of the Arizona Department of Transportation, State of Arizona, who acknowledged before me, that he executed the within and foregoing instrument, on behalf of such governmental entity, being authorized to do so, for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Beverley W. Griffeth, Notary Publid

My commission expires

Commission Express Det. 17, 1987

CITY OF PHOENIX a municipal corporation

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		Mar∨in A. Andrev	us, City Manager	
		By: Jalla	Manns	roli-manuouse sidra
STATE OF ARIZONA	) ) ss	REAL ES	STATE ADMINISTRATOR	
County of Maricopa				
undersigned Notary <del>Manager</del> , City of Ph	Public, pe oenix, Ari going inst	rsonally appeared h zona, who acknowled rument, on behalf o	, 19 <u>86</u> , before me <del>larvin A. Andrews, the</del> lged before me, that he of such governmental en	City tohr executed
IN WITNESS WHEREOF,	I hereunt	o set my hand and c	official seal.	

Maria Lue Kuls

John E. Burko

My commission expires

My Commission Regimes July 23, 1990

The foregoing Amendment to Participation Agreement and Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities has been reviewed pursuant to A.R.S. 11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the power and authority granted to the City of Phoenix under the laws of the State of Arizona.

Dated this 29TH day of DECEMBER, 1988

APTING (

COUNTY OF MARICOPA)
I, LORRIE TUERSCHMANN , the duly appointed,
qualified and acting DEPUTY CITY CLERK of the City
of Phoenix, County of Maricopa, State of Arizona, do
hereby certify and attest the attached to be a true
and correct copy of AN EXCERPT OF MINUTES OF THE COUNCIL OF
THE CITY OF PHOENIX DATED DECEMBER 14, 1988 PERTAINING TO THE
WITHDRAWAL OF ORDINANCE S-18190
all as appears of record in the office of the City
Clerk.
IN WITNESS WHEREOF, I hereunto set my hand and
caused the official seal of the City of Phoenix to be
affixed hereunto this 5 day of
January , 198 9.

(SEAL)

STATE OF ARIZONA )

The Phoenix City Council convened in formal session on Wednesday, December 14, 1988, at 3:00 p.m. in the Council Chambers.

### INVOCATION

The invocation was given by Dr. Wallace Klandrud of Bethel Lutheran Church.

### PLEDGE

The Pledge of Allegiance to the Flag was led by Vice Mayor Mary Rose Wilcox.

### ROLL CALL

Present: Council Members Howard Adams, Calvin C.
Goode, Linda Nadolski (arrived late), John
Nelson (arrived late), Bill Parks, Duane
Pell, Vice Mayor Mary Rose Wilcox, and

Mayor Terry Goddard

Absent: Council Member Paul Johnson

Also

Present: Acting City Manager Jack Tevlin,

City Attorney Rod McDougall, City Clerk Vicky Miel, Assistant City Attorney Edward P. Reeder, NIH Assistant Director Betty Ohr, and Planner III Steve Muenker

### MINUTES OF MEETINGS

The minutes of this meeting would be reviewed by Mrs. Wilcox.

Mayor Goddard left the voting body temporarily and Mrs. Wilcox assumed the Chair.

Dr. Parks stated that he had reviewed the minutes of the formal meeting of November 16, 1988, found them to be in order, and MOVED their approval. This was SECONDED by Mr. Adams. MOTION CARRIED UNANIMOUSLY.

Mrs. Wilcox stated that she would hold the review of minutes of the recessed meeting of November 16, 1988, until later. (A motion to approve follows the last item.)

December 14, 1988

ADD-ON ITEM 72.1

DISTRICT 1 - ABANDONMENT OF PUBLIC RIGHT-OF-WAY V-88095-A - F-1486

Resolution 17406 abandoning part of a public utility easement west of 56th Street beginning 50 feet south of Bell Road extending 224 feet south; and declaring an emergency, was presented to the Council.

Mr. Goode declared a possible conflict of interest on Item 48 and withdrew from the voting body.

### ITEM 48

### PAYMENT ORDINANCE - F-436

Ordinance S-18187 authorizing the expenditure of public money for payment of a claim against the City of Phoenix; and declaring an emergency, was presented to the Council.

This requested continuing payment authority for the contract and/or bid awarded by the City Council on November 23, 1988. The total payment amounted to \$138,366.41.

MOTION was made by Mr. Adams, <u>SECONDED</u> by Mrs. Wilcox, that Ordinance S-18187 be adopted.

Roll Call: Aves:

es: Adams, Nadolski, Nelson, Parks,

Pell, Vice Mayor Wilcox and

Mayor Goddard

Nays: None Absent: Johnson

Mr. Goode returned to the voting body.

MOTION CARRIED. Ordinance adopted.

ITEM 51

DISTRICT 8 - AMENDING INTER-GOVERNMENTAL AGREEMENTS 19012 AND 19598 - STORM DRAIN AND IRRIGATION WASTE FACILITIES -F-1917

Ordinance S-18190 authorizing the City Manager to execute an amendment to intergovernmental agreement for reconstruction of joint use storm drainage and irrigation waste facilities and further authorizing the City Manager to execute and deliver an easement and quit-claim deed to the City of Tempe; and declaring an emergency, was presented to the Council.

MOTION was made by Mr. Adams, <u>SECONDED</u> by Mrs. Wilcox, that Ordinance S-18190 be withdrawn. <u>MOTION CARRIED</u> <u>UNANIMOUSLY</u>.

December 14, 1988

S-88048 Canyon Retreat at Mountain Park Ranch 28th Street and Frye Road

It was recommended that the above plat be approved by the City Council and certified by the City Clerk.

As this item was a duplicate submitted in error, Mr. Adams MOVED that Item 105 be withdrawn, per staff request. This was SECONDED by Mr. Goode. MOTION CARRIED UNANIMOUSLY.

### MINUTES OF MEETING

Mrs. Wilcox stated that she had reviewed the minutes of the recessed meeting of November 16, 1988, found them to be in order and MOVED their approval. This was SECONDED by Dr. Parks. MOTION CARRIED UNANIMOUSLY.

### ADJOURNMENT

Mayor Goddard declared the meeting adjourned.

VICE MAYOR

ATTEST:

CITY CLERK

1772j:aml

### CITY OF TEMPE a municipal corporation

Approved and Accepted:

STATE OF ARIZONA SS. County of Maricopa un this, the \*\*\* day of the Undersigned Notary Public, personally appeared \*\*\* Smithele \*\*, 1977, before me, the Mayor of the City of Tempe, Arizona, who acknowledged before me, that he executed the within and foregoing instrument on betalking the second of the contract executed the within and foregoing instrument, on behalf of such governmental entity, for the purposes therein contained. IN WITNESS WHEREOF, I hereunto set my hand and official seal. My commission expires 8-2-90 The foregoing Amendment to Participation Agreement and Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities has been reviewed pursuant to A.R S. 11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the power and authority granted to the City of Tempe under the laws of the State of Arizona.

I, Karen Brittingham, the duly appointed Deputy City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the attached to be a true and exact excerpt of the Minutes of the Regular City Council Meeting of February 12, 1987, of the City of Tempe, Arizona.

DATED this 8th day of March, 1989.

Karen Brittingham Deputy City Clerk

City of Tempe

buildings and premises so as to safeguard life, health, property and public welfare.

- \*24. PERSONNEL RULES & REGULATIONS (0301-01) ORDINANCE 87.02 Held a public hearing and adopted Ordinance 87.02 to amend the Personnel Rules & Regulations by adding Rule 28 outlining procedures for employees to follow who feel they have been victims of sexual harassment and amending Rule 8 updating residency requirements for City of Tempe.
- \*25. **REAL PROPERTY DISPOSITION (0903) ORDINANCE 87.04** Held public hearing and adopted an ordinance for exchange of land at 32nd Street and I-10, Phoenix, AZ, with Denro United Partners I to facilitate new development at 32nd Street and the freeway and improve a storm drain channel which serves Tempe and others.

C87-143 8

### RESOLUTIONS

### MISCELLANEOUS DEPARTMENTAL REPORTS, ETC.

- \*26. Fire Department Monthly Incident Report December 1986
- \*27. Community Services Monthly Activity Report December 1986
- \*28. Building Construction Activity Report for January 1987.
- \*29. Property Conservation Report for January 1987.
- \*30. Quarterly Financial Report for the six months ended December 31, 1986.

### NON-CONSENT AGENDA

### **MISCELLANEOUS**

- 31. **DESIGN REVIEW APPEALS** (0405-01) Hold a public hearing for HOLIDAY INN OF TEMPE to Appeal a Design Review Board Condition of Approval #DRB-87.17 for Holiday Inn signage at 915 East Apache Blvd. The Condition requesting appeal is as follows:
  - 1. That a changeable copy panel shall be lowered to within 6" in height of the existing brick planter, deleting the corrugated aluminum pedestal. Details to be approved by staff prior to issuance of building permits.

The applicant is also requesting clarification of Conditions #5 & 6 as listed below:

- 5. That a 3' high brick screen wall be added to the Apache Road frontage, only in front of parking. Details to be approved by staff prior to issuance of building permits.
- 6. That a 3-24" box street trees be added to the Apache Road street frontage between the driveways. Details to be approved by staff prior to issuance of building permits.

Mr. Day spoke to this appeal and responded to queries.

Mr. Merkel reviewed the actions of the Board of Adjustment and the Design Review Board.

Mr. Neuheisel spoke to his request to upgrade the property which has

### FLOOD CONTROL DISTRICT OF MARICOPA COUNTY a municipal corporation and political subdivision

Recommended by: Chief Enginéer and General Manager Approved and Accepted: STATE OF ARIZONA SS. County of Maricopa On this, the 20th day of undersigned Notary Public, personally appeared \_\_\_\_\_\_\_ the Chairman of the Board of Directors of the Flood Control District, (who acknowledged before me, that he executed the within and foregoing instrument, on behalf of such governmental entity, for the purposes therein contained. IN WITNESS WHEREOF, I hereunto set my hand and official seal. My commission expires 10/24/91 The foregoing Amendment to Participation Agreement and Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities has been reviewed pursuant to A.R.S. 11-952, as amended, by the undersigned General Counsel who has determined that it is in proper form and within the power and authority granted to the FAAod Control District under the laws of the State of Arizona ay of Dated thi

# FLOOD CONTROL DISTRICT OF MARICOPA COUNTY AGENDA INFORMATION FORM



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ENCUMBRANCE NO	III	Pub	lic Works	CONTROL NUMBER:	PW-929
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Date

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Clerk of the Board

6900-012 10:87

dii

Date

County Manager

## SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT a political subdivision of the State of Arizona

Accepted and Approved:	Attest and Countersigned:
John R. Lassen	By Paulatice
Title	Title SECRETARY
STATE OF ARIZONA ) ) ss. County of Maricopa )	
On this, the 14th day of undersigned Notary Public, personally a	esident and Secretary who acknowledged and foregoing instrument on behalf of
IN WITNESS WHEREOF, I hereunto set my h  CFECH DEAL DOIL STAITH Notary Public — State of Arizona MARICOPA COUNTY My Comm Expires May 3, 1991  Notary	DonEbnuth
My commission expires	
The foregoing Amendment to Participatio Reconstruction of Joint Use Storm Drain been reviewed pursuant to A R S. 11-952 attorney who has determined that it is authority granted to the Salt River Pro District, under the laws of the State o	age and Irrigation Waste Facilities has , as amended, by the undersigned in proper form and within the power and ject Agricultural Improvement and Power
Approved as to Form:	
Method J. Reament Attorney  Dated this 9 day of June	, 19 <b>&amp;9</b>
valed this day of yure	, 19 <b>0</b> /

## SALT RIVER VALLEY WATER USERS' ASSOCIATION an Arizona Corporation

Accepted and Approved:	Attest and Countersigned:		
By John R. Sassen	By Tavelin Rice		
Title PRESIDENT	Title SECRETARY		
STATE OF ARIZONA ) ) ss. County of Maricopa )			
On this, the 14th day of undersigned Notary Public, personally appeared Notary Who acknowledged Notary Public, personally appeared Notary Public, personally appeared Notary Who acknowledged Notary Who acknowled			
IN WITNESS WHEREOF, I hereunto set my h	and and official seal.		
OFFICIAL SEAL  DOLLE: SMITH  Motary Parks — State of Arizona LAARIGOPA COUNTY My Comm Expires May 3, 1991  Notary	Public Public		
My commission expires			
been reviewed pursuant to A.R.S 11-952 attorney who has determined that it is	age and Irrigation Waste Facilities has		
Attorney  Dated this 9 day of June	-		
Dated this 9 day of June	, 19 <b>&amp;9</b>		

PROJECT: I-IR-10-3(177)

SECTION: 24th Street - 40th Street

RESOLUTION

THEREFORE, authorization is hereby given to enter into said Amendment which, upon completion, shall be submitted for approval and execution by the Director, Arizona Department of Transportation.

James S. CREEDON, Deputy Director James & Curdesc

Charles L. Miller, Director

Arizona Department of Transportation

JDC:ks



### Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

### INTERGOVERNMENTAL AGREEMENT

### DETERMINATION

A. G. Contract No. KR87-1679, is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

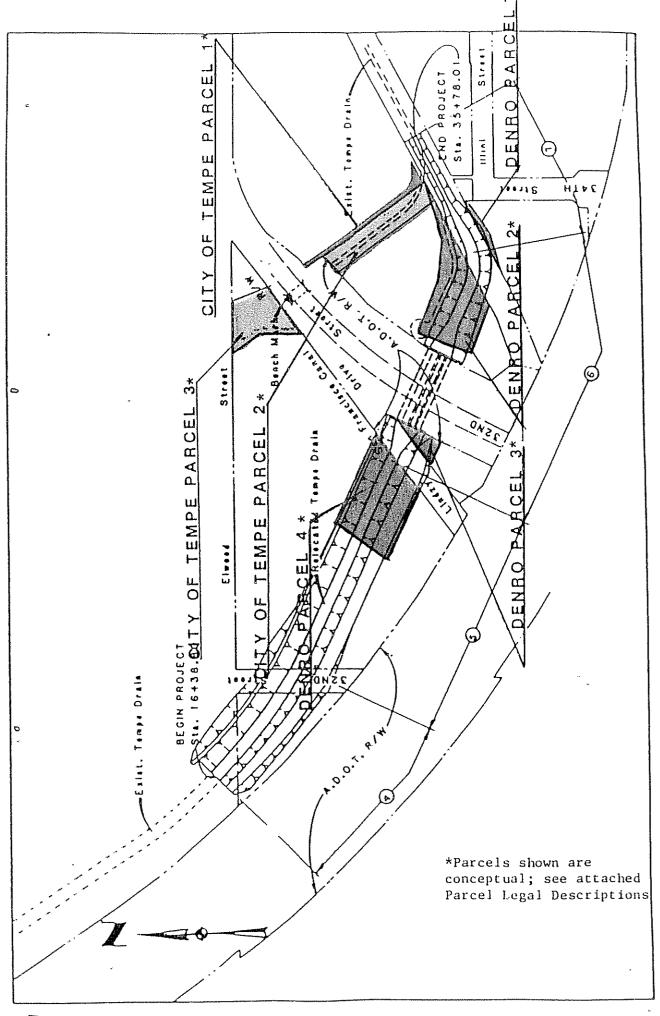
No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 15 day of

ROBERT K. CORBIN Attorney General

Transportation Division

3658G



#### DESCRIPTION

DENRO PARCEL NO. 1:

That part of Lot 1, Block 3, UKEMAH ACRES, according to Book 29 of Maps, page 30, records of Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Lot 1; thence South 41° 38′ 34″ West a distance of 64.85 feet; thence South 70° 12′ 47″ West a distance of 144.92 feet to point on the Northerly line of said Lot 1, said point being the point of intersection of the North line of Parcel G, according to Book 299 of Maps, page 42, and Affidavit recorded in Document No. 87-218535 , records of Haricopa County, Arizona, with the Northeasterly boundary of proposed right of way to be acquired by Arizona Department of Transportation, as set forth on said Affidavit; thence North 61° 28′ 43″ East along the Northerly line of said Lot 1, a distance of 204.24 feet to the POINT OF BEGINNING.

#### DENRO PARCEL NO. 2:

OF BEGINNING.

That part of Lot 3, Block 1, OKEMAH ACRES, according to Book 29 of Maps, page 30, records of Maricopa County, Arizona; and that part of the Northwest quarter of the Southwest quarter of Section 24, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of the Southwest quarter of Section 24, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; thence South 89° 44' West along the North line of said Southwest quarter, a distance of 1,483.32 feet; thence South  $00^\circ$   $13^\circ$   $17^\circ$  East, a distance of 277.25 feet; thence South  $37^\circ$   $13^\circ$   $17^\circ$  East, a distance of 343.62 feet to a point on the Northerly line of the Tempe Orain as shown on the plat of Southbank, according to Book 306 of Haps, page 44, records of Maricopa County, Arizona, said point being the PUINT OF BEGINNING; thence South 61° 28' 43" West along the Northerly line of the said Tempe Drain as shown on the plat of Okemah Acres, according to Book 29 of Maps, page 30, records of Maricopa County, Arizona, a distance of 372.16 feet to the Northeasterly boundary of proposed right of way to be acquired by Arizona Department of Transportation, as shown on Map recorded in Book 299 of Maps, page 42, and Affidavit recorded in Document No. 87-218535 , records of Maricopa County, Arizona; thence North 64° 26' 09" West along said proposed right of way, a distance of 163.28 feet to the Easterly right-of-way line of University Drive as shown on the plat of said Southbank; thence North 27° 00° 51" East along said Easterly right-of-way line, a distance of 120.04 feet to the Southwest corner of Lot 60 of said Southbank: thence South  $64^\circ$   $26^\circ$   $09^\circ$  East, a distance of 167.93 feet; thence North  $83^\circ$   $19^\circ$   $02^\circ$  East, a distance of 99.93 feet; thence North  $66^\circ$   $02^\circ$   $15^\circ$  East, a distance of 179.74 feet to the POINT

#### DENRO PARCEL NO. 3:

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That part of Lot 4, Block 1, OKEMAH ACRES, according to Book 29 of Haps, page 30, records of Maricopa County, Arizona; and that part of the Northwest quarter of the Southwest quarter of Section 24, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

CUMMENCING at the Northeast corner of said Southwest quarter; thence South 89° 44' 28" West along the North line of said Southwest quarter a distance of 1.318.38 feet;

quarter a distance of 1,318.38 feet; thence South 00° 29' 05" East, a distance of 33.00 feet to the South right of way line of Elwood Street as shown on the plat of said OKEMAH ACRES:

OKÉMAH ACRES; thence South 89° 44' 28" West along said South right of way line a distance of 21.91 feet to a point on the Southerly right of way line of Lindzy Drive as shown on the plat of said OKEMAH ACRES;

line of Lindzy Drive as shown on the plat of said UKEMAH ACRES; thence South 52° 44′ 28″ West along said Southerly right of way line a distance of 750.64 feet to the East corner of that certain parcel described in instrument recorded in Docket 10800, page 112, records of Maricopa County, Arizona, said corner being the POINT OF BEGINNING of the parcel herein described;

thence continuing along said Southerly right of way line and the North line of said parcel described in Docket 10800, page 112, and the North line of said tot 4, Block 1, a distance of 100.52 feet to the Northeasterly boundary of proposed right of way to be acquired by Arizona Department of Transportation, as shown on Map recorded in Book 299 of Maps, page 42, and Affidavit recorded in Document No.

87-218535, records of Maricopa County, Arizona; thence South 68° 44' 10" East along said proposed right of way a distance of 43.86 feet to a point on the North line of that certain parcel described in instrument recorded in Docket 5471, page 299, records of Maricopa County, Arizona;

records of Maricopa County, Arizona; thence North 27° 00' 51" East along the North line of said parcel described in Docket 6471, page 299 and along the South line of said parcel described in Docket 10800, page 112, a distance of 86.16 feet to the PUINT OF BEGINNING;

EXCEPT any part lying within Southbank, according to Book 306 of Maps, page 44, records of Maricopa County, Arizona.

### DENRO PARCEL NO. 4:

That part of Tract A, OKEMAH ACRES, according to Book 29 of Maps, page 30, records of Maricopa County, Arizona, described as follows:

BEGINNING at the point of intersection of the Southwesterly line of Lot 1, SOUTHBANK, according to Book 306 of Maps, page 44, records of Maricopa County. Arizona, with the North line of Lindzy Drive as shown on the plat of Okemah Acres, according to Book 29 of Maps, page 30, records of Maricopa County, Arizona;

thence North 66° 46′ 25″ West, along said Southwesterly line a distance of 278.56 feet to the Northeasterly boundary of proposed right of way to be acquired by Arizona Department of Transportation, as shown on Map recorded in Book 299 of Maps, page 42, and Affidavit recorded in Document No. 87-218535, records of Maricona County, Arizona.

Maricopa County, Arizona; thence South 35° 09' 29" West along said proposed right of way, a distance of 156.79 feet;

thence South 68° 44' 11" East along said proposed right of way, a distance of 228.45 feet to a point on said North line;

thence North 52° 44′ 46" East along said North line a distance of 167.32 feet to the POINT OF BEGINNING.

Tempe Parcel 1: A PART OF THE EXCEPTION from Parcel 1 as described on A.L.T.A. Survey #5072, prepared by Michael P. Weir on 9/8/85.

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BEGINNING at the most Northerly corner of Lot 3, Block 1, OKEMAH ACRES, thence, South 37 degrees, 10 minutes, 45 seconds East, along the Southwesterly line of said Parcel 1, a distance of 49.40 feet to the POINT OF BEGINING of the tract to be described: Thence, North 52 degrees, 49 minutes, 15 seconds East, a distance of 5.00 feet; thence, South 37 degrees, 10 minutes, 45 seconds East, a distance of 301.27 feet; thence, South 61 degrees, 46 minutes, 58 seconds East, a distance of 84.07 feet; thence North 82 degrees, 37 minutes, 49 seconds East, a distance of 69.40 feet to a point 5.00 feet perpendicular distant from the Northwesterly Right-Of-Way line of the Tempe Drainage Ditch No. 2; thence South 61 degrees, 31 minutes, 15 seconds West, parallel to said Right-Of-Way line a distance of 101.38 feet to a point on the Southwesterly line of said Parcel 1; thence, North 37 degrees, 10 minutes, 45 seconds West, along said Southwesterly line, a distance of 396.87 feet to the POINT OF BEGINNING.

(Basis of Bearings taken from above described Plat of Survey.)

Tempe Parcel 2: LOT 3, BLOCK 1, OKEMAH ACRES, according to Book 29 of Maps, Page 30, records of Maricopa County, Arizona;

Easement to construct, operate and maintain a drainage ditch, together with appurtenant facilities over, under and across the following described property:

The Northeasterly 70 feet (as measured at right angles to the Northeasterly lot line) of that portion of Lot Three (3), being a part of Block One (1) of OKEMAH ACRES, per map recorded in Book 29 of Maps, at Page 30, in the office of the County Recorder of Maricopa County, Arizona, which lies Southeasterly of the following described line:

BEGINNING at a point on the North line of the Northeast Quarter of the Southwest Quarter (NE 1/4, SW 1/4) of Section 24, Township 1 North, Range 3 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona, which is

EXHIBIT "A" PAGE 4 of 6

40.30 feet Easterly of the Northwest corner thereof; thence, South 52 degrees, 09 minutes, 40 seconds West, 290.31 feet; thence, from an initial bearing of South 52 degrees, 09 minutes, 40 seconds West, along the arc of a curve to the left having a radius of 1,432.40 feet, a distance of 437.01 feet; thence, South 55 degrees, 19 minutes, 08 seconds East, 112 feet to THE TRUE POINT OF BEGINNING: Thence, North 36 degrees, 52 minutes, 06 seconds East, 212.71 feet; thence, North 45 degrees East 158 feet, more or less, to a point on the Northeasterly line of Aforesaid Lot 3, and the end of this line description.

Tempe Parcel 3: THAT PORTION OF LAND LYING within the East 425 feet of the Northwest Quarter of the Southwest Quarter of Section 24, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, said land also being a portion of Tract "A" of OKEMAH ACRES, a subdivision according to Book 29 of Maps, Page 30, records of Maricopa County, Arizona, described as:

COMMENCING at the Northeast corner of said Tract "A"; thence West (assumed bearing) along the North line of said Tract "A", 175.36 fet to the POINT OF BEGINNING: Thence, South 21 degres, 07 minutes, 50 seconds East to an intersection with a line parallel to and 10.00 feet (perpendicular distance) Northeasterly of the Northwesterly prolongation of the Northeasterly line of Lot 3, Block 1 of said OKEMAH ACRES, said intersection being on the Southeasterly line of said Tract "A"; thence Southwesterly along the Southeasterly line of said Tract "A" 198.61 feet more or less to an intersection with the West line of the East 425 feet of the Northwest Quarter of the Southwest Quarter of said Section 24; thence, North 00 degrees, 14 minutes, 30 seconds West, along the West line of said East 425 feet, to an intersection with the North line of said Tract "A"; thence East along the North line of said Tract "A", 119.06 feet to the POINT OF BEGINNING: Also that part of the Northwest Quarter of the Southwest Quarter of Section 24, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona lying within Tract "A", as shown on the plat of OKEMAH ACRES, a subdivision according to Book 29 of Maps, Page 30 records of Maricopa County, Arizona described as a parcel of land 115 feet (perpendicular distance) in width lying Southwesterly of and adjoining the Northwesterly prolongation of the Northeasterly line of Lot 3,

Block l of said OKEMAH ACRES; EXCEPT therefrom that portion lying within the East 425 feet of the Northwest Quarter of the Southwest Quarter of said Section 24.

FILED WITH SUCRETARY OF STATE
Date Field, AR -19-7.7.7.

Bediefary of State

19012

### AGREEMENT FOR THE RECONSTRUCTION

OF JOINT USE STORM DRAINAGE

AND IRRIGATION WASTE FACILITIES

DEC 2 0 1977

### WITNESSETH:

WHEREAS, the parties hereto, with the exception of PHOENIX, have previously entered into an Intergovernmental Agreement for the reconstruction of joint use storm drainage and irrigation waste facilities on February 9, 1966, as amended by Addendum dated November 24, 1969, and

WHEREAS, the parties to this Agreement (including PHOENIX) desire to set forth their understanding and agreements relating to the reconstruction and maintenance of said storm drainage and irrigation waste facility, and

WHEREAS, the aforementioned facilities accommodating storm, flood and irrigation waste waters will hereinafter be referred to as "The Channel", and

WHEREAS, TEMPE, PHOENIX and DISTRICT desire to reconstruct The Channel, commonly referred to as Tempe Drainage District No. 2 -- Ditch, and generally commencing at the West right-of-way line of the Hobokam Expressway and terminating at or near 34th Street and the Salt River, as shown on Exhibit B of the Agreement of February 9, 1966, which includes a combination irrigation waste ditch, storm drain and flood control channel, to reduce flood damage to the citizens of PHOENIX and TEMPE, and

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Exhibit "B"

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WHEREAS, TEMPE, PHOENIX and DISTRICT are desirous of entering into an agreement whereby TEMPE will design and supervise the reconstruction of The Channel with the cost of reconstruction to be shared among TEMPE, PHOENIX and DISTRICT at their sole and joint expense, and

WHEREAS, the parties hereto are desirous of setting forth the maintenance responsibilities of The Channel when reconstructed, and

WHEREAS, the parties hereto are desirous of redefining the maximum drainage discharge of water, measured in cubic feet per second (c.f.s.), through The Channel.

WHEREAS, the public agencies, which are parties hereto are empowered to enter into and perform this Agreement as follows:

STATE, pursuant to A.R.S. § 28-108; TEMPE, pursuant to Article 1, Section 1.03, Tempe City Charter; PHOENIX, pursuant to Chapter 4, § 2 Paragraph 45; and Chapter 2, § 2, Paragraph i of the Phoenix City Charter. DISTRICT, pursuant to A.R.S. § 45-2360, as amended.

WHE REAS, attached to this Agreement are certified or authenticated copies of appropriate ordinances, resolutions or motions authorizing the respective public agencies to this Agreement and the association to enter into same.

NOW THEREFORE, in consideration of the mutual promises and covenants, as more particularly set forth below, the parties hereby agree as follows:

1. By Indenture of even date herewith, attached hereto as Exhibit C, the Salt River Project Agricultural Improvement and Power District, without warranty of the right, title and interest held by it, grants and conveys to the City of Phænix, an easement and the right to construct, reconstruct, maintain and use portions of the Salt River Project Agricultural Improvement and Power District's existing right-of-way (more particularly described in Exhibit C attached hereto and incorporated herein by reference) for a combination storm drain, irrigation waste ditch and flood control channel, such use to be in common with that of the Salt River Project Agricultural Improvement and Power District in carrying out is irrigation and electrical functions.

The State, City of Tempe, and the District are the grantees of an east-ment dated the 25th day of February, 1977, from the Salt River Project

LAW DEFICES OF ARBY J. RICHMOND IN C. 25 - FLODE 1. PORTH FIRST AVENT 1.

Exhibit B 2 05 17

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Agricultural Improvement and Power District. The easement is more particularly described in the indenture attached to the Agreement dated the 9th day of February, 1966, and entitled "State-City-Water Users' and Maricopa County Flood Control District Agreement for the Construction of Joint Use Storm Drainage and Irrigation Waste Facilities, 279-66-1, Interstate Project 1-10-3-133, 40th Street-Broadway." The State, City of Tempe, and District do hereby consent to the City of Phoenix' joint use of the storm drainage and Irrigation waste facilities as described in this agreement, and hereby grant the City of Phoenix the right to use said facilities in common with the District, Tempe and State.

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- 2. Upon the execution of a construction agreement between TEMPE, PHOENIX and DISTRICT, the respective parties pursuant to the terms of said construction agreement and at their sole and joint expense, shall reconstruct The Channel in accordance with those certain plans and specifications on file with the Tempe Public Works Director and captioned, "City of Tempe Project No. 75032." All parties to this Agreement agree that the Plans and Specifications for Project No. 75032 will be reviewed and approved prior to actual reconstruction of the aforementioned Channel.
- 3. STATE, DISTRICT, ASSOCIATION and PHOENIX assume no liability for the engineering and reconstruction of The Channel by TEMPE and any damage arising out of any aspect of the work embraced in said engineering and reconstruction shall be solely the liability of TEMPE.

  TEMPE agrees to totally save, hold harmless and indemnify the other parties to this Agreement and any of their departments, agencies, officers or employees from all costs and damages, direct or indirect, incurred by any engineering and reconstruction of the aforesaid Channel and, in addition, TEMPE agrees brotally save, hold harmless and indemnify the other parties to this Agreement from any and all costs and damages whatsoever which may be incurred by said other parties to any person or property whatsoever, by virtue of any activity, condition or event arising out of the performance or non-performance of any aspect of the engineering and reconstruction of the aforesaid Channel by TEMPE, any of its agents, or any of its independent

contractors. The aforementioned costs which may be incurred by STATE, DISTRICT, ASSOCIATION or PHOENIX shall include, but not be limited to, court costs, expenses of litigation and reasonable attorney's fees.

- 4. The parties hereto mutually agree that each party will limit its maximum discharge of water, measured in cubic feet per second (c.f.s.), through The Channel as follows:
  - A. STATE 93.0 c.f.s.
  - B. TEMPE 1268.0 c.f.s.
  - C. PHOENIX 332.0 c.f.s.
  - D. ASSOCIATION 32.5 c.f.s.
- 5. The DISTRICT agrees, upon completion of all work called for under Project No. 75032, in accordance with Chapter 10, Article 5, Section 45-2360, as amended, Arizona Revised Statutes, and subject to the liability restrictions of Paragraph 3 of this Agreement, to declare, accept and maintain that portion of The Channel beginning at the West right-of-way line of Hohokam Expressway and extending to approximately the intersection of 34th Street and the Salt River. The DISTRICT thereafter agrees to assume and pay for all future maintenance to said Channel, structures and culverts, as shown in those certain Plans and Specifications bearing Project No. 75032, at no expense to the ASSOCIATION, STATE, TEMPE or PHOENIX; provided, however, if the interest acquired by the DISTRICT to the property in question shall at some future time prevent the DISTRICT from carrying out its obligations under the terms and conditions of this Agreement, then the parties to this Agreement agree to use their collective best efforts to resolve such insufficiency of interest. Any liability to third persons incurred by the DISTRICT as a result of its obligations aforesaid and directly attributable to insufficiency of its interest acquired shall be independent of this Agreement and subject to resolution at that time.
- 6. The DISTRICT agrees to totally save, hold harmless and indemnify the ASSOCIATION, STATE, TEMPE and PHOENIX and any of their departments, agencies, officers or employees, against any and all liability by virtue of subsequent injuries, losses or damages, direct or indirect, occurring through the use and operation of said Channel, structures and rights-of-way in

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Exhibit B

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connection with the operation of The Channel; provided however, the parties mutually agree that the DISTRICT'S obligation to totally save, hold harmless and indemnify the other parties to this Agreement shall be contingent upon the parties seeking enforcement of the hold harmless and indemnification provision not being in breach of this Agreement at the time the obligation or responsibility arose.

The DISTRICT further agrees to totally save, hold harmless and indomnify all other parties to this Agreement and any of their departments, agencies, officers or employees from any and all costs and damages, direct or indirect, to any person or property whatsoever, which is caused by any activity, condition or event arising out of the performance on non-performance of any maintenance obligation assumed hereunder by the DISTRICT, any of its agents, or any of its independent contractors. Costs which may be incurred by STATE, ASSOCIATION, PHOENIX or TEMPE, or any of their departments, agencies, officers or employees, shall include, but not be limited to, court costs, expenses of litigation and reasonable attorney's fees.

- 7. Execution of this Agreement shall in no way be construed to in any way impair or relinquish the rights, obligations and possible liabilities, known or unknown, arising between the parties by virtue of the terms of the Intergovernmental Agreement of February 9, 1966, as amended by Addendum dated November 24, 1969.
- 8. The obligation of TEMPE, PHOENIX and DISTRICT, as more particularly set forth in Paragraphs 2 and 3 above, with respect to the reconstruction of The Channel shall terminate upon completion of all work called for under City of Tempe Project No. 75032 and acceptance by TEMPE. The duration of this Agreement shall be until such time as same is partially or completely terminated by the consent of all parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and same shall become effective as of the date it is filed with the Secretary of State pursuant to A.R.S. \$11-952 (E) (33rd Legislature, Chapter 133, Section 2).

DATE FILED WITH THE SECRETARY OF STATE December 19, 1922.

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THE CORP.

### STATE OF ARIZONA

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	By wa Ordner
	Title Director, Arizona Department of Transportation
ATTEST:	
	CITY OF PHOENIX a municipal account
	CITY OF PHOENIX a municipal corporation MARVIN A. ANDREWS City Manager
	By BY Relief Buts  Marvin A. Andrews, City Manager
City Clerk	<del>.</del>
••	CITY OF TEMPE, a municipal corporation
	By Halliam J. Foliano Mayor
Martine S. Temple	Tase
disputy City Club	SALT RIVER VALLEY WATER WATER USERS' ASSOCIATION
ATTESTANIX COUNTERSIGN	By Kail H. Olel President
The second section of the section of the second section of the section of the second section of the secti	FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
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### KNOW ALL MEN BY THESE PRESENTS:

That the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, a political subdivision of the State of Arizona, for and in consideration of the sum of One Dollar, and other valuable consideration, receipt of which is hereby acknowledged, without warranty of the right, title and interest held by it do hereby grant to the CITY OF PHOENIX, a municipal coporation, the right, easement, and privilege to construct, reconstruct, operate, maintain and use for a combination storm drain, irrigation waste ditch and flood control channel that portion of a certain drainage ditch known as Drainage Ditch of Drainage District No. 2, Maricopa County which lies within the North half of Section 19, Township I North, Range 4 East and within Section 24, Township I North, Range 3 East of the Glia and Salt River Base and Meridian, Maricopa County, Arizona.

It being understood that the Grantor herein reserves unto itself the right to continue its use of said drainage ditch for irrigation and electric utility purposes.

The GRANTEE shall at all times have the right of full and free ingress and egress to said easement for the purpose heretofore specified.

In the event the right, privilege and easement herein granted shall be abandoned and permanently cease to be used for the purpose herein granted, all rights herein granted shall cease and revert to the grantors, their heirs or assigns.

The covenants and agreements herein set forth shall extend and inure in favor and to benefit of and shall be binding on the heirs, successors in ownership and estate, assigns and lessees of the respective parties hereto.

IN WITNESS WHE REOF, the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, has caused its corporate name to be signed and its corporate seal to be affixed by the undersigned officers the reunto duly authorized this general day of Neveriber, 1977.

Secretary

STATE OF ARIZONA

County of Maricopa

On this the 8th day of November, 1977, before me DONE SMITH the undersigned officer, personally appeared RABLE AREL and PAUL D. RICE, who acknowledged themselves to be the President and Assistant Secretary of the Salt River Project Agricultural Improvement and Power District and that they as such officers respectively being authorized so to do, executed the same for the purpose therein contained by signing the name of said corporation by themselves as such officers ruspectively.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires: in to English to A fig. E, 197€

EXHIBIT C

# FLOOD CONTROL DISTRICT OF MARICOPA COUNTY GENERAL COUNSEL

### INTERGOVERNMENTAL AGREEMENT

### DETERMINATION

The Flood Control District of Maricopa County Agreement

No. C-3881 which is an agreement between public agencies has been reviewed

pursuant to A.R.S. §11-952, as amended, by the undersigned General Counsel

who has determined that it is in proper form and is within the powers and authority

granted to the Flood Control District of Maricopa County under the laws of the

State of Arizona.

DATED this /// day of August, 1977.

LARRY J. RICHMOND General Counsel

4 Care Wil Lanson

### OF THE BORRO OF SUPERVISORS

#### MARICOPA COUNTY

602 County Administration Bldg.

111 S. 3rd Avenue, Phoenix, Arlzona B5003

HENRY H. HAWS District 1

GEORGE L. CAMPBELL District 2

BOB CORBIN District 3

HAWLEY ATKINSON District 4

ED PASTOR District 5



Herbert Donald, Chief Engineer and General Manager of the Flood Control District MEMO TO:

FROM:

Rhea Woodall, Clerk of the Board

DATE:

August 17, 1977

The Board of Supervisors in formal session August 15 approved Intergovernmental Agreement No. C-3881 with the State of Arizona, Cities of Tempe and Phoenix, and the Salt River Valley Water Users' Association providing for the City of Tempe to increase the capacity of 48th Street Drain.

Accordingly, we are returning 6 executed copies of said agreement for further processing, after which please return a fully executed copy for recording and our permanent file.

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EXHIBIT B

3

# AGREEMENT FOR THE RECONSTRUCTION OF JOINT USE STORM DRAINAGE AND IRRIGATION WASTE FACILITIES.

APPROVED AS TO FORM and within the powers and authorities granted to the City of Phoenix, under the laws of the State of Arizona.

ACTING City Attorney our

STATE OF ARIZONA )
COUNTY OF MARICOPA)

I, Deborah Paglia , the duly appointed, qualified and acting Deputy City Clerk of the City of Phoenix, County of Maricopa, State of Arizona, do hereby certify and attest the attached to be a true and correct copy of the Minutes of the meeting of the Council of the City of Phoenix held on the 6th day of September, 1977, authorizing the execution of an Agreement for reconstruction of joint use storm drainage and irrigation waste facilities all as appears of record in the office of the City Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Phoenix to be affixed hereunto this lath day of October , 1977.

DEPUTY CITY CLERK

(SEAL)

Exhibit B

#### NEW BUSINESS

There being no one present in opposition, MOTION was made by Mr. Gutierrez, SECONDED by Mr. Donahue, that the following requests be approved as recommended and the date of September 26, 1977, at 7:00 p.m. be set as the date for public hearing on the rezoning applications considered by the Planning Commission on August 24, 1977. MOTION CARRIED UNANIMOUSLY.

CANCELLATION OF LEASE NO. 18945 - RENTAL OF HILLTOP RESIDENCE AT 11659 NORTH 16TH STREET - F-3263

The Council heard request to authorize the mutual cancellation of Lease No. 18945 for rental of the City-owned residence at 11659 North 16th Street. Ordinance No. S-10008, adopted August 2, 1977 authorized lease of the property by auction or by direct negotiations.

Mrs. Carter expressed her concerns about hilltop residence rentals. She said this is the second time this month that a lease was broken, and she hoped that situation would improve.

REPAIR AND MAINTENANCE OF CHILLER UNITS - AGREEMENT NO. 19006 - F-3140

The Council heard request to authorize the City Manager to enter into agreements with Westinghouse Electric Corporation, Phoenix, Arizona, for the repair and maintenance of Westinghouse 550-ton chiller units located at the Phoenix Civic Plaza.

## TRANSMITTER-COMBINERS - F-2488

The Council heard request to authorize the Acting Purchasing Agent to purchase two transmitter-combiners for use in the Police Department Communications Network.

### CIVIC PLAZA SIGN REPAIR - F-3140

The Council heard request to authorize the City Manager to enter into agreements with American Sign and Indicator Corporation, Spokane, Washington, for the repair and upgrading of four automated display signs and three hundred sign modules at the Civic Plaza at a price of \$14,904, and for their one-year maintenance at a price of \$3,420, the latter to be paid in installments of \$285 per month.

#### PURCHASE OF THREE EXECUPORT TER-MINALS - F-2834

The Council heard request to authorize the City Manager to exercise the purchase option on three (3) Execuport Terminals currently leased from Computer Transceiver Corp. This further authorizes the City Controller to disburse the necessary funds. This request bears the approval of the MIS Director and the City Manager's office.

#### PURCHASE OF ONE EXECUPORT TER-MINAL - F-2834

The Council heard request to authorize the City Manager to exercise the purchase option on one Execuport Terminal currently leased from Execuport Leasing. This further authorizes the City Controller to disburse the necessary funds. This request bears the approval of the MIS Director and the City Manager's office.

Exhibit B

AUTHORIZATION TO EXECUTE AN AGREE-MENT FOR RECONSTRUCTION OF JOINT USE STORM DRAINAGE AND IRRIGATION WASTE FACILITIES - AGREEMENT NO. 19012 - F-4697 AND F-1917

The Council heard request to authorize the City Manager to execute an agreement for the reconstruction of joint use storm drainage and irrigation waste facilities located between 48th and 30th Streets along Superior Street alignment. This agreement has been negotiated among the State, the City of Tempe, the Flood Control District, the Salt River Project and Phoenix to give Phoenix a legal right to discharge storm water into an enlarged channel.

MAJOR STREET PROJECT NO. P-72-225.01 - AGREEMENT NO. 19013 -F-4775

The Council heard request to authorize the City Manager to enter into a letter agreement for the installation of a new pipeline in Central Avenue from Grand Canal to Highland Avenue. This is a cooperative project between the City and Salt River Project to replace a badly leaking pipeline which is causing damage to the pavement along the west side of Central Avenue. The Salt River Project will do the installation and the costs will be shared on a 50-50 basis.

AIRPORT PROJECT NO. A-72-249.00 - AGREEMENT NO. 14158 - F-4496

The Council heard request to authorize the City Manager to execute a supplemental agreement with Wadsworth, Jensen & Associates, Consulting Engineers, to revise the project documents for Sky Harbor Boulevard West and provide project documents for the signing and graphics for the entire roadway system.

AIRPORT PROJECT NO. A-76-128.00 - AGREEMENT NO. 18222 - F-4297

The Council heard request to authorize the City Manager to execute a supplemental agreement with Magadini-Alagia Associates, Structural Engineers, Inc., for design of nine additional pre-engineered metal executive hangars and one large hangar to be located at the northwest corner of Sky Harbor International Airport. The work also includes review and approval of shop drawings submitted by the building manufacturer, relocation of one existing "T" hangar, site survey and review of buildings adjacent to proposed hangars for effect of added seismic and vertical loads.

MAJOR STORM SEWER PROJECT - 23RD AVENUE, MCDOWELL ROAD TO CAMPBELL AVENUE - PROJECT NO. ST-74-205.02 - AGREEMENT NO. 19014 - F-4695

The Council heard request to authorize the City Manager to enter into a license agreement with Atchison, Topeka & Santa Fe Railway Company, for the right to install a 78" storm sewer across railroad property at 23rd Avenue and Encanto Boulevard. This license also authorizes the City's future contractor to work within the railroad right of way.

MAJOR STREET PROJECT NO. P-74-241. 00 - AGREEMENT NO. 19015 - F-4760

The Council heard request to authorize the City Manager to enter into a letter agreement with the Salt River Project (Power) for the relocation of certain power poles along 19th Avenue between Glendale Avenue and Dunlap Avenue.

> Exhibit B 13 of 19

#### RESOLUTION

BE IT RESOLVED on this date Nouse bee 12., 1977, I,
W. A. ORDWAY, the below undersigned Director, Department of Transportation,
have determined that it is to be to the advantage of the State of Arizona that the
Department of Transportation, acting by and through the Highways Division,
to enter into an agreement with the City of Tempe, the City of Phoenix, the Salt
River Valley Water User's Association and the Flood Control District of Maricopa
County, for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste
Facilities (48th Street Drain).

W. A. ORDWAY, Director
Arizona Department of Transportation

ENTIBIT B



# Altorney General

BRUCE E BADBITT

# INTERGOVERNMENTAL AGREEMENT DETERMINATION

A. G. Contract No. 77-823 which is an
agreement between public agencies has been reviewed pursuant
to A.R.S. §11-952, as amended, by the undersigned Assistant
Attorney General who has determined that it is in proper form and
is within the powers and authority granted to the State or its agencies
under the laws of the State of Arizona.
No opinion is expressed as to the authority of the
remaining parties, other than the State or its agencies, to enter into
sald contract.
DATED this 7 <sup>1</sup> day of November , 197 7 .
BRUCE E. BABBITT The Attorney General
JAMES L. HOHNBAUM Assistant Attorney General

Exhibit B 15 05 17

#### CONSENT AGENDA

Mayor LoPiano announced that the following items would be considered; under the Consent Agenda; that this is a public hearing and if members of the City Council or the public wish to have an item deleted from the Consent Agenda, please ask to be recognized immediately after the items have been read:

Auth to Execute Irrigation Agreement - Carver Road Auth to Execute Cost-Sharing Agreement - 48th Street Drain (2) Ratification of Leased Property - Chipman Building, 409 Mill (3) 5C (4) Agreement for ECHO Program бλ Apache Boulevard Medians Co-op/Phoenix - Aerial Mapping 6B BΑ Ord. 371.2) BB Ord. 495.8) - Tempe Bicycle Ordinance Ord. 808.40 - Century Plaza Investment Corp Rezoning AG to R1-6, 660' West of SWC Kyrene & Guadalupe (Z-77.25) 10A Res 1468 - Modifying Assessments for I.D. 117 - Martin Lane 10B Res 1469 - Committment to Street Abandonment and overhead power line extension in Eaton Industrial Park 13 Miscellaneous Departmental Reports, etc. Vice-Mayor Mitchell moved that Council approve the Consent Agenda Items: 5C (1), 5C (2), 5C (3), 5C (4), 6A, 6B, 8A, 8B, 8C, 10A, 10B, 13; Councilman Hatton seconded; roll call vote 7-0.

### B. Manager's Announcements

Miscellaneous
(1) Auth to Execute Irrigation Agreement - Carver Road
Vice-Mayor Mitchell moved that the City Council authorize the
Mayor to execute an irrigation agreement for Carver Road;
Councilman Hatton seconded; roll call vote 7-0.

(2) Auth to Execute Cost-Sharing Agreement - 48th Street Drain (Phoenix, Maricopa County Flood Control Eistrict). Vice-Mayor Mitchell moved that the City Council authorize the Mayor to execute the cost-sharing agreement for the 48th Street Drain; Councilman Hatton seconded; roll call vote 7-0.

I, Virginia S. Thompson, the duly appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the above to be a true and exact excerpt of the Minutes of the Regular Council Meeting of December 1, 1977 of the City Council, Tempe, Arizona.

DATED: December 6, 1977

Virginia S. Thompson, CMC City Clerk

FXhibit B

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# APPROVAL OF TEMPE CITY ATTORNEY

I hereby state that I have reviewed the proposed intergovernmental agreement, between the STATE OF ARIZONA, CITY OF PHOENIX, SALT RIVER VALLEY WATER USER'S ASSOCIATION, FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, and the CITY OF TEMPE, and declare the agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the City, to enter into said agreement.

DATED this 6th day of December, 1977.

City Attorney

Merkel

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# PARTICIPATION AGREEMENT

# FOR THE RECONSTRUCTION OF JOINT USE STORM DRAINAGE AND IRRIGATION WASTE FACILITIES

THIS AGREEMENT, made and entered into by and between the City of Phoenix, Arizona, a municipal corporation, acting by and through its City Manager, hereinafter called "PHOENIX", the City of Tempe, a municipal corporation, acting by and through its Mayor, hereinafter called "TEMPE", and the Flood Control District of Maricopa County, a political subdivision of the State of Arizona and a municipal corporation, hereinafter called "DISTRICT".

# WITNESSETII:

WHEREAS, the parties hereto, among others, have entered into an Intergovernmental Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities on the 19th day of December, 1977, which Agreement defines the various rights and duties of the parties thereto, and

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WHEREAS, the parties to this Agreement desire to set forth their understanding and agreements relating to the reconstruction of joint use storm drainage and irrigation waste facilities, hereinafter referred to as "The Channel", and generally commencing at the West right-of-way line of the Hohokam Expressway and terminating at or near 34th Street and the Salt River, as shown on Exhibit B of that certain intergovernmental Agreement for the Reconstruction of joint use storm drainage and irrigation waste facilities entered into by the parties hereto, with the exception of Phoenix, dated February 9, 1966, which includes a combination irrigation waste ditch, storm drain and flood control channel, to reduce flood damage to the citizens of PHOENIX and TEMPE, and

WHEREAS, TEMPE, PHOENIX and DISTRICT are desireous of entering into this Agreement whereby FEMPE will design and supervise the reconstruction of The Channel with the cost of reconstruction to be shared among TEMPE, PHOENIX and DISTRICT at their sole and joint expense, as more particularly set forth below.

LAW OFFICES OF CARRY J. RICHMOND. P. C. 25. FLODA THE OWN CHILD ATTIVITY SHOEMER ANTON ASSESS TEACHMOND. CCC. THEOLOGY -]-

and

WHEREAS, the parties hereto are empowered to enter into and perform this Agreement as follows:

DISTRICT, pursuant to A.R.S. Section 45-2360 as amended.
PHOENIX, pursuant to Chapter 4, Section 2, Paragraph 45;
and Chapter 2, Section 2, Paragraph 1 of the Phoenix
City Charter.

TEMPE, pursuant to Article 1, Section 1.03, Tempe City Charter.

and

WHEREAS, attached to this Agreement are certified or authenticated copies of appropriate ordinances, resolutions or motions authorizing the respective parties to this Agreement to enter into same,

NOW, THEREFORE, in consideration of the mutual promises and covenants, as more particularly set forth below, the parties hereby agree as follows:

- l. Plans, specifications, contractor's proposals, and other contract documents shall be prepared by TEMPE or such engineering firm as it might designate and shall be subject to the review and approval of PHOENIX and DISTRICT prior to the start of construction. TEMPE also agrees to supervise the reconstruction of The Channel.
- TEMPE shall acquire all necessary right-of-way to complete the reconstruction of The Channel described above. TEMPE, however, grants to PHOENIX and DISTRICT a perpetual use of said right-of-way and The Channel for storm drainage and flood control purposes.
- 3. DISTRICT shall contribute the sum of \$\frac{200,000.00}{} as its share of the total cost of the reconstruction of The Channel, which cost shall include: design, right-of-way, acquisition, construction and inspection, staking and field supervision.
  - PHOENIX agrees to pay 20.75 % of the cost of the reconstruction of The Channel, after deducting therefrom the contribution by the DISTRICT. The maximum obligation of the CITY shall not exceed \$335,000.00.

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- TEMPE agrees to pay 79.25 % of the cost of the reconstruction 5. of The Channel, after deducting therefrom the contribution by the DISTRICT.
- The following provisions shall apply to the reconstruction of 6. The Channel:
  - PHOENIX shall supply TEMPE with all available 6.01 mapping and utility information on file in the offices of PHOENIX;
  - The reconstruction of The Channel above-described shall 6.02 be wholly constructed and supervised during construction by TEMPE and TEMPE or its contractor shall have complete charge and full supervision of the work;
  - TEMPE agrees to totally save, hold harmless and indemnify 6.03 the DISTRICT and PHOENIX and any of their departments, agencies, officers or employees against any and all liability which is or may be incurred during the construction phase of the reconstruction of The Channel.
  - The contract for said reconstruction of The Channel shall 6.04 be awarded by TEMPE after it has been determined that the low bid is satisfactory and acceptable to TEMPE, PHOENIX and DISTRICE;
    - All work in connection with the reconstruction of The Channel, at all times during construction and after construction. shall be subject to the inspection and approval of engineers representing PHOENIX, and DISTRICT who shall promptly communicate to TEMPE such approval. It is expressly

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communications to the contractor(s) shall be made by TEMPE. All work shall be performed in accordance with standards

understood and agreed by the parties hereto that all

satisfactory to TEMPE, PHOENIX and DISTRICT. TEMPE

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shall provide inspection, staking and field supervision during construction;

- 6.06 PHOENIX and DISTRICT reserve the right to inspect and examine all invoices, contractor's affidavits, waivers of lien and all other records and documents in connection with the payment for materials, labor, equipment and all other fees, costs and expenses incurred in connection with the reconstruction of The Channel;
- 6.07 TEMPE shall submit to PHOENIX claims for payment at the completion of right-of-way acquisition and design, and monthly during the construction phase of the reconstruction of The Channel.

  PHOENIX agrees to process claims for payment within forty-five (45) days;
- 6.08 TEMPE shall submit to DISTRICT a claim for the amount set forth under Paragraph 3, hereinabove, during the construction phase of the reconstruction of The Channel. DISTRICT agrees to process said claim within forty-five (45) days.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and same shall become effective as of the date it is filed with the Maricopa County Recorder pursuant to A.R.S. §11-952.

DATE FILED WITH THE MARICOPA COUNTY RECORDER Educary 3, 1928

CITY OF PHOENIX, a municipal corporation

DEVELOPMENT SERVICES MANAGER

Marvin A. Andrews, City Manager

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ATTEST:

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CITY OF TEMPE, a municipal corporation

By William J. Thans

ATTEST:

Granial Thimpson
Gity Clerk

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, a municipal corporation

Chairman, Board of Directors

ATTEST:

Olerk of the Board

LAW DIFICES OF
LARRY J. RICHMOND. P. C.
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150 ENDRIN ARTON \$5003
TELEPRONE \$4003-131 0303

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# FLOOD CONTROL DISTRICT OF MARICOPA COUNTY GENERAL COUNSEL

# INTERGOVERNMENTAL AGREEMENT

## DETERMINATION

The Flood Control District of Maricopa County Agreement

No. C-386/ which is an agreement between public agencies has

been reviewed pursuant to A. R. S. \$11-952, as amended, by the undersigned

General Counsel who has determined that it is in proper form and is within

the powers and authority granted to the Flood Control District of Maricopa

County under the laws of the State of Arizona.

DATED this /2 day of JANUARRY 1978.

LARRY J. RICHMOND General Counsel

Exhibite 6 of 8

# APPROVAL OF TEMPE CITY ATTORNEY

I hereby state that I have reviewed the proposed intergovernmental agreement, between the City of Phoenix,

Maricopa County, and the CITY OF TEMPE, and declare the agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the City, to enter into said agreement.

DATED this 19th day of January , 1978

DAVID R. MERK City Attorney

Exhibit C

PARTICIPATION AGREEMENT FOR THE RECONSTRUCTION OF THE JOINT USE STORM DRAINAGE AND IRRIGATION WASTE FACILITIES.

APPROVED AS TO FORM and within the powers and authority granted to the City of Phoenix under the laws of the State of Arizona.

Acting City Attorney On 5

Exhibit C

# ADDENDUM NO. 1 TO PARTICIPATION AGREEMENT FOR THE RECONSTRUCTION OF JOINT USE STORM DRAINAGE AND IRRIGATION WASTE FACILITIES

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THIS ADDENDUM NO. 1, made and entered into by and between the City of Phoenix, Arizona, a municipal corporation, acting by and through its City Manager, hereinafter called "PHOENIX," the City of Tempe, a municipal corporation, acting by and through its Mayor, hereinafter called "TEMPE," and the Flood Control District of Maricopa County, a political subdivision of the State of Arizona and a municipal corporation, hereinafter called "DISTRICT," to that certain Participation Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities, dated February 3, 1978.

#### WITNESSETH:

WHEREAS, the parties hereto have previously entered into that certain Participation Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities on February 3, 1978, which Agreement defines the various rights and duties of the parties, and

WHEREAS, the anticipated total project cost is now expected to increase primarily due to extremely high inflation present between the 1977-1978 preliminary estimates and today's estimates, and

WHEREAS, the parties have mutually agreed to increase their respective contributions to meet these anticipated total project cost increases,

NOW THEREFORE, in consideration of the mutual promises and covenants, as more particularly set forth below and in that certain Participation Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities, the parties bereby agree as follows:

A. That Paragraphs 3, 4 and 5 of that certain Participation Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities are hereby amended to read as follows:

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3. DISTRICT agrees to pay 12.15% of the cost of the reconstruction of The Channel, which cost shall include: design, right-of-way, acquisition, construction and inspection, staking and field supervision. The maximum obligation of the DISTRICT shall not exceed \$320,927.00.

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- 4. PHOENIX agrees to pay 18.23% of the cost of the reconstruction of The Channel, which cost shall include: design, right-of-way, acquisition, construction and inspection, staking and field supervision. The maximum obligation of PHOENIX shall not exceed \$481,522.00
- 5. TEMPE agrees to pay 69.62% of the cost of the reconstruction of The Channel, which cost shall include: design, right-of-way, acquisition, construction and inspection, staking and field supervision. The maximum obligation of TEMPE shall not exceed \$1,838,922.00.
- B. In all other respects, the parties do ratify and reaffirm the remaining provisions as set forth in the Participation

  Agreement for the Reconstruction of Joint Use Storm Drainage and Irrigation Waste Facilities.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and same shall become effective as of the date it is filed with the Maricopa County Recorder pursuant to A.R.S. §11-952.

DATE FILED WITH THE MARICOTA COUNTY RECORDER Jebuary 7, 1980

CITY OF PHOENIX, a municipal corporation MARVIN A. ANDREWS City Manager By Blue & Bullo DEVELOPMENT SERVICES MANAGER

ATTEST:

CITY OF TEMPE, a municipal corporation

By Harry Z. Witchell

Empleton

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, a municipal

corporation

# APPROVAL OF TEMPE CITY ATTORNEY

I hereby state that I have reviewed the proposed intergovernmental agreement, between the CITY OF PHOENIX, Flood Control District of Maricopa County, and the CITY OF TEMPE, and declare the agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the City, to enter into said agreement.

DATED this 10th day of December, 1979.

DAVID R. MERKE City Attorney ADDENDUM NO. 1 TO PARTICIPATION AGREEMENT FOR THE RECONSTRUCTION OF JOINT USE STORM DRAINAGE AND IRRIGATION WASTE FACILITIES.

CONTRACT NO.

APPROVED AS TO FORM and within the powers and authorities granted to the City of Phoenix, under the laws of the State of Arizona.

ACTINGCITY Attorney

# FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

### GENERAL COUNSEL

## INTERGOVERNMENTAL AGREEMENT

### DETERMINATION

The Flood Control District of Maricopa County

Agreement No. \_\_\_\_\_ which is an agreement between public agencies has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned General Counsel who has determined that it is in proper form and is within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

DATED this 7th day of January, 1980.

LARRY J. RICHMOND General Counsel